

2001 OCT 23 P 2:23

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Mount Pleasant and Hemlock,
Michigan)

)
)
)
)
)
)
)

MM Docket No. 01-107 /
RM-10057

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 10, 2001**Released: October 19, 2001**

By the Chief, Allocations Branch:

1. In response to a Petition for Rule Making filed by Wilks Broadcasting LLC ("Wilks"), the Commission has before it for consideration the Notice of Proposed Rule Making, 16 FCC Rcd 9456 (2001), requesting the reallocation of Channel 233C1 from Mount Pleasant, Michigan, to Hemlock, Michigan.¹ Wilks also requests modification of the license for Station WCEN-FM to specify operation on Channel 233C1 at Hemlock. Wilks filed supporting comments in which it stated its intention to file an application for Channel 233C1 at Hemlock. Late-filed initial comments were received from MacDonald Broadcasting Company ("MacDonald").² Informal comments were filed by Patsy R. Dalrymple.³

2. Based upon the information presented in this proceeding, we believe the public interest would be served by reallocating Channel 233C1 from Mount Pleasant, Michigan, to Hemlock, Michigan, since it would result in a preferential arrangement of allotments pursuant to the Commission's Change of Community procedures. See Modification of FM and TV Authorizations

¹ This proceeding was originally commenced by Wilks Broadcasting LLC. The assignment of Station WCEN-FM's license to Wilks License Co., LLC (File No. BALH-20010420AAP) was granted on May 11, 2001 and was consummated on May 31, 2001.

² Initial comments were due on or before June 25, 2001. MacDonald's comments were received on June 28, 2001, acknowledging that they are late as initial comments, requesting that they be accepted as reply comments. As requested, we will accept these comments as reply comments.

³ Ms. Dalrymple's comments, which included a list of names and addresses of local residents opposed to the reallocation of Station WCEN along with an article from the Morning Sun were not served on Wilks Broadcasting LLC as required by Section 1.420 of the Commission's Rules. As such, these comments will not be considered.

--

to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). As stated in the Notice, Hemlock is listed in the 1990 U.S. Census as a Census Designated Place with a population of 1,601 people with its own post office and zip code. Further, the community has its own schools, library, several churches, including Hemlock United Methodist Church, and numerous businesses that serve its residents, including Hemlock United Semiconductor Corporation, Hemlock Cleaners, Hemlock Family Hair Care, Hemlock body Shop and the Hemlock Veterinary Clinic. Hemlock also has several banks, a daycare center, restaurants, grocery stores and the Maple Hill Golf Club. Hemlock would receive its first local service thus fulfilling allotment priority (3) of the Commission's allotment priorities.⁴ This action will not deprive Mount Pleasant of local service as Station WCZY-FM and non-commercial Stations WCMU-FM and WMHW-FM are licensed to the community. Retention of Channel 233C1 in Mount Pleasant would be considered under priority (4), other public interest matters.

3. The reallocation proposal is consistent with the requirements set forth in Change of Community, supra. As stated in the Notice, Station WCEN-FM is a pre-1964-grandfathered short-spaced station and this grandfathered short-spacing should survive the requested change of community. Station WCEN-FM is short-spaced to Stations WCSX-FM, Birmingham, Michigan, WKLQ-FM, Holland, Michigan, and WBYB(FM), Leland, Michigan. The short-spacings between Station WCEN-FM and WCSX(FM), Birmingham and Station WKLQ(FM), Holland, are grandfathered as the stations were authorized prior to 1964. With respect to Station WBYB(FM), Leland, the Commission authorized Station WBYB(FM) to operate at a site short-spaced to Station WCEN-FM pursuant to Section 73.215 of its Rules. Station WCEN-FM will continue to operate at its existing transmitter site. Therefore, there will be no new short-spacings created or existing short-spacings increased. See Killeen and Cedar Park, Texas, 15 FCC Rcd 1945 (2000). We recognize that we are creating a new short-spaced allotment in contravention of Section 73.207 of the Rules. However, we have held that grandfathered FM Stations that were in compliance with our Rules when authorized should be afforded the same opportunity to change their community of license as other stations authorized in conformity with our rules, where there is no change in transmitter site. See Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (1992), Oceanside and Encinitas, California, 15 FCC Rcd 15302 (1999) and Fremont and Holton, Michigan, 14 FCC Rcd 17108 (1999).

4. Channel 233C1 can be allotted to Hemlock, Michigan, in compliance with the Commission's minimum distance separation requirements at Station WCEN-FM's licensed site 46.1 kilometers (28.7 miles) northwest of the community.⁵ Wilks will be required to specify its

⁴ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See Revision of FM Assignment Policies and Procedures, 90 FCC Rcd 29 88 (1982).

⁵ The coordinates for Channel 233C1 at Hemlock are 43-43-36 and 84-36-16. At this site, Station WCEN-FM is

current licensed site for Station WCEN-FM, Mount Pleasant, for the applications for a construction permit and a license for Station WCEN-FM, Hemlock, since the change of community of license is protected as a grandfathered short spaced station.⁶ In accordance with Section 1.420(i) of the Commission's Rules, we will modify the license for Station WCEN-FM to specify operation on Channel 233C1 at Hemlock, Michigan, as its new community of license. Since Hemlock, Michigan, is located within 320 kilometers of the U.S.-Canadian border, the Canadian Government will be notified of the change of community for Channel 233C1 from Mount Pleasant to Hemlock.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective December 3, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel Number
Hemlock, Michigan	233C1
Mount Pleasant, Michigan	282A

6. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Report and Order to the following:

Northern Star Broadcasting, LLC
Station WLJZ
213 S. Airport Road West
Traverse City, Michigan 49686

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Wilks License Co., LLC for Station WCEN-FM, Channel

fully spaced to the licensed site for Station WLJZ, Channel 233C3, Mackinaw City, Michigan. However, Station WLJZ filed a one-step application for Channel 233C2 under Section 73.215 of the Rules which conflicts with Channel 233C1 at hemlock (BPH-20000310ACJ). The construction permit for Channel 233C2, Mackinaw City, expires February 22, 2004. We will serve Station WLJZ with a copy of this Order.

⁶ On January 12, 2001, Wilks filed a "Request for Forbearance" from application of the main studio rule for Station WCEN-FM. That Request remains pending. See Section 73.1125 of the Rules. Here we point out that action taken in the Report and Order granting Wilks change of community proposal, has no bearing whatsoever on the pending Request for Forbearance of the request for waiver of Section 73.1125, or the fact that Wilks may have located its main studio at a site in contravention of Section 73.1125 without prior Commission approval. These matters are not appropriately considered in the context of a rulemaking proceeding.

233C1, Mount Pleasant, Michigan, IS MODIFIED to specify operation on Channel 233C1 at Hemlock, Michigan, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-19910403KB except for the community as specified above. Any changes, except for those specified, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-1991043KB, except for the community as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, IF THE REQUEST IS GRANTED, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Wilks Broadcasting Co., LLC, licensee of Station WCEN-FM, is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license from Mount Pleasant, Michigan, to Hemlock, Michigan.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions relating to the application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau